



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]

DECISION

CCB/145513

PRELIMINARY RECITALS

Pursuant to a petition filed November 26, 2012, under Wis. Admin. Code §HA 3.03(4), to review a decision by the Waukesha County Health and Human Services in regard to Child Care, a hearing was held on February 05, 2013, at Waukesha, Wisconsin.

The issue for determination is whether Petitioner's appeal was timely filed.

NOTE: The record was held open until February 7, 2012, to give Petitioner an opportunity to supplement the record, because at the end of the hearing Petitioner walked out of the hearing room, before the ALJ could confirm whether Petitioner wanted the record held open so she could submit some paystubs, or whether she preferred the record be closed.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue
Madison, Wisconsin 53703

By: Lynnae Boyanga, Economic Support
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. On July 16, 2012, Petitioner submitted a six-month report form, indicating that as of August 1, 2012, she would be living at [REDACTED] (Exhibit 3, pg. 2)
3. Petitioner lived at the [REDACTED] address for about 1 ½ weeks, then returned to her parent's home in [REDACTED] because of problems with the apartment building. (Testimony of Petitioner)
4. On August 2, 2012, the agency sent Petitioner a Notice of Proof Needed that was mailed to the [REDACTED] address. The notice requested verification of her residence, and verification of her employment and income, all of which was due by August 10, 2012. (Exhibit 4)
5. On August 16, 2012, the agency sent Petitioner a Notice of Eligibility Child Care, indicating that she was denied Child Care benefits, beginning August 1, 2012, because she failed to provide the requested verification. The notice was sent to the S. [REDACTED] address. (Exhibit 5)
6. On an unspecified date, Petitioner notified the agency that she returned to her parent's home. (Testimony of Petitioner)
7. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on November 26, 2012. (Exhibit 1)

DISCUSSION

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within 45 days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), Wis. Admin. Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of Child Care Benefits.

At the hearing, Petitioner appeared to argue that she did not necessarily receive all of the notices, because she had moved back and forth between her parent's home and the apartment in West Allis, within a matter of a few weeks. When asked if she had received the Notice of Proof Needed, Petitioner responded, "I don't know". However, in her request for Fair Hearing, Petitioner claimed that she sent verification of her employment during the second week of August, which would indicate that she received the notice. (See Exhibit 1)

If Petitioner received the Notice of Proof Needed, it is reasonable to conclude that she received Notice of Eligibility Child Care, advising her that her August Child Care benefits were denied, and that she needed to appeal by October 1, 2012. (See Exhibit 5) Petitioner's appeal was filed on November 26, 2012, well after the October 1, 2012 filing deadline. Consequently, her appeal is untimely and no jurisdiction exists to consider the merits of her appeal.

Even if jurisdiction did exist, it appears the agency correctly terminated Petitioner's benefits. The agency sent Petitioner the Notice of Proof Needed at her last known address. Petitioner must have received the notice, because she claims to have timely submitted the requested verification. However, there is no evidence that the requested verification was ever submitted by the stated deadline. As such, the agency correctly denied Child Care Benefits, beginning August 1, 2012.

CONCLUSIONS OF LAW

There is no jurisdiction as the appeal is untimely.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

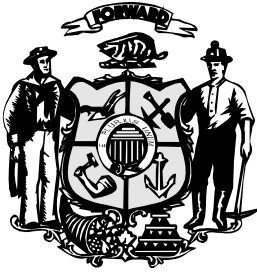
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Children and Families. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 201 East Washington Avenue, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 14th day of February, 2013.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on February 14, 2013.

Waukesha County Health and Human Services
Child Care Benefits